

IN THE SUPREME COURT  
STATE OF MISSOURI

STATE OF MISSOURI	)	
ex rel. JOE REED,	)	
Relator.	)	
	)	
v.	)	Cause No. SC83408
	)	
THE HON. THOMAS J.	)	
FRAWLEY,	)	
Circuit Judge for St. Louis City,	)	
Respondent.	)	

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ORIGINAL PETITION FOR WRIT OF PROHIBITION OR WRIT OF MANDAMUS  
IN THE MISSOURI SUPREME COURT  
FROM THE JUVENILE DIVISION OF  
THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, MISSOURI  
THE HONORABLE THOMAS J. FRAWLEY, JUDGE

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RELATOR'S STATEMENT, BRIEF AND ARGUMENT IN SUPPORT OF  
PERMANENT WRIT OF PROHIBITION OR WRIT OF MANDAMUS

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### **JURISDICTIONAL STATEMENT**

Jurisdiction lies with this Court pursuant to Missouri Supreme Court Rules 84.22, 94.01 and 97.01.

No petition for the relief requested has been made to any higher court.

Relief was sought from, and denied by, the Eastern District Court of Appeals for the State of Missouri in Cause No. ED79075 on February 21, 2001.

## **STATEMENT OF FACTS**

On April 26, 2000, a petition was filed in JU005-0541, in the Family Court of St. Louis City, alleging that Joe Reed, born December 4, 1983, falls within the provisions of Section 211.031, RSMo. (1994), in that he committed the offenses of Tampering 1st Degree, Murder 2nd Degree and Unlawful Use of a Weapon (Exhibiting) on or about April 25, 2000. (Ex. A, p. A1).

Counsel for Joe Reed retained the services of Linda Sharpe-Taylor, Ph.D., to evaluate Joe Reed's competency. Dr. Sharpe-Taylor determined that Joe Reed was incompetent to stand trial; she determined that Joe could not fully assist in his own defense, assist his attorney or understand the trial process. (Ex. B, p. A14). Dr. Sharpe-Taylor's report was provided to Respondent, the Honorable Thomas J. Frawley, on August 14, 2000.

Patricia Carter, Ph.D., employed by the Missouri Department of Mental Health, thereafter conducted a competency evaluation of Joe Reed at the request of the Juvenile Officer. Dr. Carter concurred that Joe Reed lacked the capacity to understand the proceedings against him or to assist in his own defense. (Ex. C, p. A14). Dr. Carter's report is part of Family Court record in Cause No. JU005-0541.

On August 29, 2000, the St. Clair County State's Attorney Office requested the extradition of Joe Reed to the State of Illinois pursuant to a petition filed in St. Clair County, Illinois, alleging that on or about April 10, 2000, Joe Reed committed the offenses of Aggravated Vehicular Hijacking and Armed Robbery in East St. Louis, Illinois. (Ex. A, p. A1). On October 5, 2000, Governor Mel Carnahan signed a rendition

warrant for the arrest of Joe Reed at the request of Governor George Ryan of the State of Illinois. (Ex. A, p. A1-A2).

On October 5, 2000, counsel for Joe Reed filed a Motion to Stay Family Court from Proceeding with Extradition Hearing and Request for Competency Hearing in the Family Court of St. Louis. (Ex. A, p. A2). On October 16, 2000, a Memorandum in Support of Juvenile's Motion to Stay was filed.

On December 19, 2000, Respondent denied Joe Reed's Motion to Stay and Request for Competency Hearing. Respondent held that due process does not require Joe Reed to be competent for an extradition hearing. (Ex. A, p. A4).

On February 5, 2001, Counsel for Relator filed, in the Eastern District Court of Appeals, a Petition for Writ of Prohibition or Writ of Mandamus and Suggestions in Support of the Petition.

On February 21, 2001, the Eastern District Court of Appeals denied Relator's Petition for Writ of Prohibition or Writ of Mandamus.

On March 20, 2001, this Court granted a preliminary writ.



## **POINTS RELIED ON**

**I. Respondent erred in denying Joe Reed's Motion to Stay Family Court from Proceeding with Extradition Hearing and Request for Competency Hearing in violation of Joe Reed's rights to due process and effective assistance of counsel as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution by not following Section 548.101, RSMo. (1994), which affords Joe Reed the right to a hearing on his extradition to the State of Illinois and the right to counsel at that hearing. Due process and effective assistance of counsel requires that Joe Reed be able to communicate meaningfully with counsel and have a rational understanding of the extradition proceedings.**

Hogan v. Buerger, 647 S.W.2d 211 (Mo.App.E.D. 1983)

Ex parte Potter, 21 S.W.3d 290 (Tex. Crim. App. 2000)

Dusky v. United States, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960)

**II. Respondent erred in denying Joe Reed’s Motion to Stay Family Court from Proceeding with Extradition Hearing and Request for Competency Hearing in violation of Joe Reed’s rights under the Americans with Disabilities Act. By failing to provide reasonable accommodations for Joe Reed’s disability, Respondent excluded Joe Reed from participation in the services, programs and activities of the State of Missouri.**

Pennsylvania Department of Corrections v. Yeskey, 524 U.S. 206, 118 S. Ct.

1952,141 L. Ed. 2d 215 (1998)

Galloway v. Superior Court of the District of Columbia, 816 F.Supp. 12

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42 U.S.C. § 12131

## ARGUMENT

**I. Respondent erred in denying Joe Reed’s Motion to Stay Family Court from Proceeding with Extradition Hearing and Request for Competency Hearing in violation of Joe Reed’s rights to due process and effective assistance of counsel as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution by not following Section 548.101, RSMo. (1994), which affords Joe Reed the right to a hearing on his extradition to the State of Illinois and the right to counsel at that hearing. Due process and effective assistance of counsel requires that Joe Reed be able to communicate meaningfully with counsel and have a rational understanding of the extradition proceedings.**

### *Appropriateness of Writ of Prohibition or Writ of Mandamus as remedy*

“Prohibition will lie when there is an important question of law decided erroneously that would otherwise escape review by this Court, and the aggrieved party may suffer considerable hardship and expense as a consequence of the erroneous decision.” State ex rel. Chassaing v. Mummert, 887 S.W.2d 573, 577 (Mo. banc 1994). Similarly, “[m]andamus will issue from this court to a circuit court where the latter refuses to act in respect to a matter within its jurisdiction when it is its duty to act, that is when its refusal is, in effect, a failure to perform a duty within its jurisdiction...Said another way, where a circuit court, having obtained jurisdiction, refuses to proceed in the exercise thereof to a determination on the merits, and there is no adequate remedy by

appeal, it may be compelled to do so by mandamus...” State ex rel. Stewart v. McGuire, 838 S.W.2d 516, 518 (Mo.App.S.D. 1992). Joe Reed’s right to be competent to assist his counsel and to understand the proceedings against him are violated by the Respondent’s order.

Because Respondent’s jurisdiction is circumscribed by the legislature’s grant of a right to counsel to an alleged fugitive in Section 548.101, RSMo. (1994), Respondent has acted in excess of his jurisdiction and a writ of prohibition is an appropriate remedy. State ex rel. Williams v. Mauer, 722 S.W.2d 296, 297 (Mo. banc 1986) (prohibition appropriate when trial court intends to permit or require disclosure of privileged information).

***Due Process requires competency for an extradition hearing***

Two expert evaluations concluded that Joe Reed was not competent to proceed with a certification hearing in this matter. (Ex. B and Ex. C). Respondent’s refusal to conduct a competency hearing regarding Joe Reed prior to ruling on the extradition request from the State of Illinois denies Joe Reed’s right to due process and effective assistance of counsel, as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution.

Section 548.101, RSMo. (1994), grants the alleged fugitive in an extradition proceeding the right to demand and procure legal counsel. It further provides the alleged fugitive with the right to a hearing to challenge the extradition. Missouri courts have limited the grounds available to an alleged fugitive challenging his extradition to; (1)

fugitivity, (2) identity, and (3) authenticity of the papers. Hogan v. Buerger, 647 S.W.2d 211, 213 (Mo.App.E.D. 1983), citing Holland v. Hargar 409 N.E.2d 604 (Ind. 1980).

The individual challenging extradition has the burden of proving, by substantial and convincing evidence, that he was not in [the demanding state on] the date of the commission of the alleged crime. Id. at 213, citing Williams v. Robertson, 95 S.W.2d 79, 82 (Mo. 1936). Therefore, the statute and caselaw define Joe Reed's due process rights.

Because Section 548.101, RSMo. (1994), grants an alleged fugitive the right to counsel in an extradition proceeding, the Sixth Amendment requires that he be competent to effectively exercise this right. Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963) (extending the Sixth Amendment right to counsel to state defendants through due process clause of the Fourteenth Amendment), Kimmelman v. Morrison, 477 U.S. 365, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986); McMann v. Richardson, 397 U.S. 759, 90 S. Ct. 1441, 25 L. Ed. 2d 763 (1970) (the right to counsel must be the right to "effective" assistance of counsel to assure a fair trial). In State ex rel. Juergens v. Cundiff, 939 S.W.2d 381 (Mo. banc 1997), this Court issued a writ of prohibition prohibiting the trial court from conducting further proceedings with respect to a probation revocation where the relator lacked capacity to proceed. Just as the right to counsel in a probation revocation proceeding would be meaningless unless the defendant were competent to proceed, the right to counsel in an extradition proceeding would be meaningless if the alleged fugitive could not understand the extradition proceedings and communicate meaningfully with counsel. Hence, Section 548.101, RSMo. (1994),

requires a competency hearing if there is doubt about an alleged fugitive's competency in an extradition proceeding.

Extradition means an extended period of detention, involving forced travel between two states. Ierardi v. Gunter, 528 F.2d 929, 930 (1<sup>st</sup> Cir. 1976). In his concurring opinion in Michigan v. Doran, Justice Blackmun stated that the extradition process involves an "extended restraint of liberty following arrest" even more severe than that accompanying detention within a single state. Michigan v. Doran, 439 U.S. 282, 296, 99 S. Ct. 530, 539, 58 L. Ed. 2d 521 (1978) (Blackmun, J., concurring).

### ***Issue of First Impression***

The issue of whether due process requires an individual challenging extradition to be sufficiently competent to understand the nature of the proceedings and consult with and assist counsel has never been decided in Missouri. Other jurisdictions addressing this issue have taken three different approaches.

Texas courts adopted the "middle of the road" approach and concluded that, in extradition proceedings, due process requires the alleged fugitive to have sufficient mental competency to consult with and assist his attorney on the issues of identity and presence. Ex parte Potter, 21 S.W.3d 290, 297 (Tex. Crim. App. 2000). Because an alleged fugitive is entitled to counsel and is also entitled to challenge the legality of his arrest and assert defenses to the extradition warrant, the accused must be sufficiently competent to discuss with counsel the facts relating to these limited legal defenses. Id. at 296.

The State of Georgia, Oliver v. Barrett, 269 Ga. 512, 500 S.E.2d 908 (Ga. 1998), and the State of Louisiana, State v. Tyler, 398 So.2d 1108 (La. 1981), view competency as relevant in extradition proceedings only to whether an alleged fugitive can assist counsel with the limited issues in an extradition proceeding set forth by the Supreme Court in Michigan v. Doran—(a) whether the extradition documents are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive. Michigan v. Doran, 439 U.S. 282, 289, 99 S. Ct. 530, 535, 58 L. Ed. 2d 521 (1978).

The majority of states addressing the issue at bar have followed the approach mandated by Dusky v. United States, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960), which holds the alleged fugitive must have sufficient present ability to consult with counsel and have an understanding of the proceedings.<sup>1</sup> Only one state, the Commonwealth of Kentucky has determined, in a two-paragraph opinion, that competency is not relevant in the context of extradition proceedings. Kellems v. Buchignani, 518 S.W.2d 788 (Ky. 1974), citing Charlton v. Kelly, 229 U.S. 447, 33 S. Ct. 945, 57 L. Ed 1274 (1913).

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<sup>1</sup> See: Kostic v. Smedley 522 P.2d 535, 538 (Alaska 1974); Pruett v. Barry, 696 P.2d 789, 793 (Colo. 1985); People v. Kent 507 N.Y.S.2d 353, 355-56 (N.Y. Sup. Ct. 1986); State ex rel. Jones v. Warmuth, 272 S.E.2d 446, 451 (W. Va. 1980); In re Hinnant, 678 N.E.2d 1314, 1318 (Mass. 1997); Oliver 500 S.E.2d at 910; Tyler 398 So.2d at 1112.

***Respondent's reliance on the law cited in its order denying a competency hearing is misplaced.***

In his Order denying Joe Reed's Request for Competency Hearing, Respondent relied on Charlton v. Kelly, which excluded evidence offered to establish the alleged fugitive's insanity at the time of the crime, or of his present insanity, to demonstrate that he was not capable of defending the charge. Id. at 462. However, Charlton does not hold that an alleged fugitive cannot present evidence to support a defense to extradition. It ruled that the examining magistrate did not exceed his authority, in relying on a local statute, to exclude evidence of insanity. Id. at 461. The Court noted that no uniform rule could determine **how far** a magistrate should hear the accused's witnesses. (emphasis added) Id. at 461. This language implies that the examining magistrate must conduct some minimum inquiry before deciding if the requirements for extradition have been met. Further, the Supreme Court's decision in Michigan v. Doran, requires the examining court to conduct some examination regarding; (1) validity of the papers, (2) whether the individual has been charged with a crime in the demanding state, (3) whether the individual is the person named in the extradition request, and (4) whether the individual is a fugitive. Doran 439 U.S. at 289, 99 S. Ct. at 535. Therefore, if there is a question regarding the competence of the alleged fugitive, the examining court should conduct a competency hearing prior to the above inquiry. Potter, Oliver and Tyler hold that due process requires a determination regarding the ability of the alleged fugitive to assist counsel with possible defenses to the extradition.



Respondent relies on holdings of the First and Ninth Districts of the United States Court of Appeals which follow the holding of Charlton. In Romeo v. Roache, 820 F.2d 540 (1<sup>st</sup> Cir. 1987), the First Circuit rejected an alleged fugitive's argument that he suffered from a chronic, psychotic paranoid illness, holding that due process did not require a competency hearing in extradition proceedings, at least absent a more severe condition than the one presented by the alleged fugitive's doctor. Id. at 544. The Romeo court indicated that, if a more severe mental condition had been present, its decision could have been different. Id. at 544.

In Lopez-Smith v. Hood, 121 F.3d 1322 (9<sup>th</sup> Cir. 1997), the Ninth Circuit rejected a claim of mental deficiency in an extradition proceeding. The most notable issue before the court was whether mental deficiencies that would render a person incapable of standing trial would defer extradition. Id. at 1323. The Lopez-Smith court was concerned that if it adopted Lopez-Smith's position, it would interfere with the power of the President of the United States to honor extradition treaties with other countries. Id. at 1325.

Romeo and Lopez-Smith were concerned, respectively, with the severity of the mental condition with which the fugitive suffered and whether mental deficiencies would defer extradition. However, neither case dealt specifically with the alleged fugitive's ability to consult with counsel on the limited grounds available to challenge extradition.

***Effective Assistance of Counsel requires the ability to consult with counsel and understand the proceedings.***

The right to effective assistance of counsel is meaningless if the client is not competent to understand the nature of the proceeding or to consult with counsel. Pate v. Robinson, 383 U.S. 375, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966); Vaughn v. Morgett, 526 S.W.2d 434, 436 (Mo.App. 1975). The standard for competency to stand trial must be whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him. Dusky, 362 U.S. at 402-403, 80 S. Ct. at 788-789. Moreover, it is essential to due process that he has sufficient mental competency to understand the proceedings and to consult with and assist counsel in such proceedings. Kostic v. Smedley, 522 P.2d 535, 538 (Alaska 1974).

Two evaluations were conducted on Joe Reed; both doctors determined he cannot assist in his own defense or understand the proceedings against him. Linda Sharpe-Taylor, Ph.D., diagnosed him with mild mental retardation. (Ex. B, p. A11). The Individualized Education Plan conducted by the St. Louis City Public Schools in March 1999, noted that, at age fifteen, Joe Reed had not mastered basic reading, written language and math skills. (Ex. C, p. A20). It was further concluded that he was functioning six to eight years below his chronological age expectancy. (Ex. C, p. A20). Patricia Carter, Ph.D., opined that Joe Reed does not have sufficient reasoning abilities or the ability to retain and process information that would allow him to strategize with his attorney regarding decisions and options. (Ex. C, p. A24). Dr. Carter further determined

that Joe Reed currently appears unable to process more complex and abstract information that would allow him to participate meaningfully in the legal proceedings related to the delinquency petition and certification hearing. (Ex. C, p. A24). Therefore, Joe Reed cannot consult with counsel regarding possible defenses to his extradition or meaningfully participate in the hearing process.

Counsel cannot provide effective representation absent the ability to consult with the alleged fugitive regarding potential defenses about which he may have knowledge. Potter, 21 S.W.3d at 296-97. In Hogan, the alleged fugitive was able to prove that he was not in the State of Montana at the time he was accused of having committed a crime there. He was able to do this by communicating to his counsel the identity of potential witnesses who could rebut the allegation that he was in Montana when he was actually in Missouri.

Key factual questions concerning the identity of the petitioner as the accused and the presence of the petitioner in the demanding state at the time the crime was committed are not always easily resolved. Pruett v. Barry, 696 P.2d 789, 793 (Colo. 1985). Where the petitioner's incompetence is such that he is unable to consult and communicate with counsel or understand the nature of the proceedings, his ability to raise such defenses as his presence and identity is **completely foreclosed**. Id. at 793, emphasis added, citing State ex rel. Jones v. Warmuth, 272 S.E.2d 446, 451 (W. Va. 1980).

In the case at bar, Respondent erred when he held that it was not necessary for Joe Reed to be competent for extradition proceedings and that his refusal to conduct a competency hearing did not violate Joe Reed's constitutional right to due process and

effective assistance of counsel as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution. The purpose of the extradition hearing is to decide whether to allow the State of Illinois to execute their warrant for the arrest of Joe Reed. Because extradition involves his liberty, he must have some ability to understand the nature of the proceedings before the court. Therefore, Joe Reed must understand the nature of the proceedings and be able to consult with counsel regarding the limited grounds available to challenge the legality of his arrest.

Joe Reed has the burden of showing, by substantial and convincing proof, that he was not in the State of Illinois on the date of the alleged crime. Hogan, 647 S.W.2d at 213. However, Joe Reed cannot communicate with counsel regarding possible defenses to rebut allegation that he was in the State of Illinois on April 10, 2000. His mental retardation and cognitive limitations prevent him from understanding his rights or assisting counsel in defending against the extradition.

Counsel for Joe Reed is not asking this Court to decide whether he is competent to stand trial in the State of Illinois. It is well established that matters of competency to stand trial are within the purview of the court having jurisdiction over the crime. Counsel for Joe Reed is requesting that this Court adopt the approach taken by the Texas Court of Criminal Appeals in Potter and hold that due process requires the alleged fugitive to have sufficient mental competency to consult with and assist his attorney on the issues of identity and presence for an extradition hearing. Potter, 21 S.W.3d at 297.

***Requiring competence for purposes of extradition is not a method to seek sanctuary***

The Extradition Clause, U.S. Const. Article IV, § 2, cl. 2, was intended to enable each state to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed. Doran, 439 U.S. at 287, citing Biddinger v. Commissioner of Police, 245 U.S. 128, 132-133 (1917), and Appleyard v. Massachusetts, 203 U.S. 222, 227 (1906). Requiring an accused fugitive to be competent for purposes of extradition does not grant sanctuary to the accused from the demanding state. In re Hinnant, 678 N.E.2d 1314, 1320 (Mass. 1997). Rather, present competence is relevant to determine whether the permissible factors of inquiry have been satisfied. Id. at 1320.

Joe Reed is not seeking sanctuary from the State of Illinois. He is requesting that Respondent conduct a hearing on whether Joe Reed can understand the nature of the extradition proceedings or assist counsel with respect to the limited grounds available to challenge his extradition before the extradition hearing is held. Because the legislature granted the right to counsel at that hearing to challenge the legality of the arrest, then clearly due process applies. Section 548.101, RSMo. (1994). Due process demands that Joe Reed must be able to consult with counsel and understand the proceedings against him. To ignore Joe Reed's present inability to communicate meaningfully with counsel, or to understand the extradition proceedings, would reduce his due process rights to a meaningless formality. Welkes v. Brennan, 79 A.D.2d 644 (N.Y. App. Div. 1980).

For the above-stated reasons Joe Reed's rights to due process and effective assistance of counsel as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri

Constitution were violated by Respondent. Respondent should have granted Relator's Motion to Stay Family Court from Proceeding with Extradition Hearing and Request for Competency Hearing.

**II. Respondent erred in denying Joe Reed’s Motion to Stay Family Court from Proceeding with Extradition Hearing and Request for Competency Hearing in violation of Joe Reed’s rights under the Americans with Disabilities Act. By failing to provide reasonable accommodations for Joe Reed’s disability, Respondent excluded Joe Reed from participation in the services, programs and activities of the State of Missouri.**

The Americans with Disabilities Act, 42 U.S.C. § 12131 et seq. (hereinafter, “ADA”), defines a disability as a physical or mental impairment that substantially limits one or more of the major life activities of the individual. The ADA states that no qualified individual with disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity or be subjected to discrimination by any such entity. 42 U.S.C. § 12132. The State of Missouri is subject to the provisions of the ADA as a public entity, pursuant to 42 U.S.C. § 12131.

Courts are public entities subject to the provisions of the ADA. State v. Ehrenberg, 664 A.2d 1301, 284 N.J Super. 309 (N.J. Super. 1994) (where defendant’s mental illness is readily apparent to judge and defendant is facing more than minor traffic infraction, judge must err, if at all, on side of protecting the defendant’s civil rights); Galloway v. Superior Court of the District of Columbia, 816 F.Supp. 12 (D. D.C. 1993) (District of Columbia and its superior court are “public entities” within meaning of ADA; policy of excluding blind person from jury service violated the ADA); People v. Caldwell, 603 N.Y.S.2d 713, 159 Misc.2d 190 (N.Y. Crim. Ct. 1993) (as a government

entity, court system is required, pursuant to ADA to make all of its services, programs and activities available to qualified individuals with disabilities). The Supreme Court has held that the ADA extends to other state institutions. State prisons fall squarely within the statutory definition of “public entity,” which includes “any department, agency...or other instrumentality of a State or States or local government.” Pennsylvania Department of Corrections v. Yeskey, 524 U.S. 206, 208, 118 S. Ct. 1952, 1954, 141 L. Ed. 2d 215 (1998). The ADA plainly covers state institutions without any exception that could cast the coverage of prisons into doubt. Id. at 209.

Mild mental retardation is a disability that substantially limits Joe Reed’s major life activities. Joe Reed is disabled under the ADA in that his mental retardation substantially limits his ability to consult with counsel and understand court proceedings. At age fifteen, Joe Reed had not mastered basic reading, written language and math skills; he was functioning six to eight years below his chronological age expectancy. (Ex. C, p. A20). Patricia Carter, Ph.D., determined that Joe Reed currently appears unable to process more complex and abstract information that would allow him to participate meaningfully in the legal proceedings related to the delinquency petition and certification hearing. (Ex. C, p. A24).

Although there is no Missouri caselaw on point, clearly the court system in this state must comply with the ADA. Missouri courts must make reasonable accommodations to Joe Reed, pursuant to the ADA, before attempting to extradite him to the State of Illinois. A competency hearing to determine his ability to participate in his defense of the extradition hearing is a reasonable accommodation. By not making



reasonable accommodations to Joe Reed, in violation of the ADA, the State of Missouri denies him the ability to participate in the proceedings before the Honorable Thomas J. Frawley that will determine whether he will be extradited to the State of Illinois.

For the above-stated reasons, a competency hearing regarding Joe Reed and a determination of his competency is required to reasonably accommodate Joe Reed's disability under the ADA before the Respondent, the Honorable Thomas J. Frawley, conducts any further proceedings on the requested extradition to the State of Illinois.

### **III. CONCLUSION**

WHEREFORE, for the reasons set forth in Points I and II of this brief, Relator, Joe Reed, prays this Honorable Court to issue a permanent Writ of Prohibition, or in the alternative, permanent Writ of Mandamus in Cause No. JU005-0541, in the Family Court of St. Louis City. Relator, Joe Reed, moves this Court to issue a permanent writ ordering the Respondent, the Honorable Thomas J. Frawley, to grant him a competency hearing prior to conducting an extradition hearing in this matter or, in the alternative, issue a writ prohibiting the Honorable Thomas J. Frawley from conducting an extradition hearing regarding Joe Reed until Respondent makes a determination of Joe Reed's competency.

Relator, Joe Reed, further prays this Honorable Court provide an opportunity for oral arguments in support of a permanent Writ of Prohibition or, in the alternative, permanent Writ of Mandamus.

Respectfully submitted,

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**Certificate of Service**

I certify that a true copy of the above and foregoing was personally served on all of the following parties this \_\_\_\_\_ day of May, 2001.

Honorable Thomas J. Frawley (Respondent)  
Family Court of St. Louis City  
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St. Louis, MO 63108  
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Daniel Underwood

### **Certificate of Counsel Pursuant to Special Rule 1(b)**

Pursuant to Special Rule No. 1, counsel certifies that this brief complies with the limitations contained in Special Rule No. 1(b). Based upon the information provided by undersigned counsel's word processing program, Microsoft Word 2000, this brief contains 574 lines of text and 5,434 words. Further, a copy of appellant's brief on floppy disk accompanies his written brief and that disk has been scanned for viruses and is virus-free as required by Special Rule 1(f).

Respectfully submitted,

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